

**L-99-15**  
**October 28, 1999**

**TO** : Debbie Starzec  
Hearings Officer

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Divorce Effective Date - State of Alabama

This is in reply to your October 6, 1999 inquiry as to the effective date of the April 20, 1998 divorce decree terminating the December 23, 1986 marriage of retired railroad employee Kenneth A, and his former spouse, Ruth A.

On April 20, 1998, the Circuit Court of Tallapoosa County, Alabama, issued a Final Decree of Divorce ordering that the bonds of matrimony between Ruth and Kenneth are dissolved . The decree included the following paragraph:

That neither party shall again marry except to each other until sixty (60) days after the date of this decree. If an appeal from this decree is taken within sixty (60) days neither party shall marry again except to each other during the pendency of said appeal.

You question whether the divorce became effective on the date it was issued, or the day following the removal of the 60-day restriction on remarriage.

In *Fitts v. Fitts*, 222 So.2d 696 (Ala. 1969), the Supreme Court of Alabama addressed the issue of whether the relation of husband and wife was dissolved effective with the rendering of a decree of divorce, or upon the expiration of a 60-day period during which the parties were restricted from marrying. The court held that, where the case does not involve any remarriage or potential bigamy, the decree of divorce is operative from the moment of its rendition.

Fitts, 222 So.2d at 700. As the case at hand does not appear to involve any remarriage or potential bigamy, it is my opinion that the divorce decree dissolving the bonds of matrimony between Kenneth and Ruth became effective on April 20, 1998, the date it was rendered. The 60-day restriction was merely a restriction on remarriage as required by Alabama statute and did not delay the operative effect of the divorce decree. See also, Schurink v. United States, 177 F.2d 809 (5th Cir., 1949) (holding that a decree entered in an Alabama court dissolved the bonds of matrimony as of the date it was rendered and the prohibition against remarriage in the decree was a matter of public policy and did not operate to suspend the dissolution of the marriage relationship).

In your memorandum, you refer to Legal Opinion L-47-771 issued September 19, 1947, which discusses the right of parties to remarry after divorce in the state of Alabama as it applies to two cases: Vance v. State, 97 So. 230 (Ala. 1923) and Brand et al. v. State, 6 So.2d 446 (Ala. 1941). In both of these cases, the Supreme Court of Alabama held marriages to be void where the marriages occurred during the 60-day period during which marriage was prohibited and the parties married someone other than the divorced spouse. Inasmuch as L-47-771 suggests that all divorce decrees entered by courts of Alabama are inoperative for 60 days after they are rendered, or until an appeal is resolved, that advice is withdrawn. Fitts clearly holds that where the facts of the case do not involve any remarriage or potential bigamy, the decree of divorce is operative from the moment of its rendition. Fitts 222 So.2d at 700.